



# Civil Resolution Tribunal

Date Issued: December 21, 2020

File: SC-2020-005128

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Beaumier v. Kalawarny*, 2020 BCCRT 1436

B E T W E E N :

JORDYN BEAUMIER

**APPLICANT**

A N D :

LAURINDA KALAWARNY and DARREN KALAWARNY

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about the return of a deposit for a vacation home rental. The applicant, Jordyn Beaumier, says she paid \$3,500 to the respondents, Laurinda Kalawarny and Darren Kalawarny, as partial payment to rent the respondents' vacation home in mid-May 2020. Ms. Beaumier says she cancelled the rental, and followed the

respondents' cancellation policy. She claims reimbursement of \$3,000, which she says is the amount she paid less the cancellation policy's \$500 cancellation fee.

2. The respondents do not deny operating a vacation home rental business together at the time of Ms. Beaumier's booking and payments. They also do not deny that Ms. Beaumier paid the claimed amounts, or that Ms. Beaumier followed their cancellation policy when cancelling the rental. The respondents say they are or were married, and are now separated. Mr. Kalawarny says the rental was arranged by Ms. Kalawarny, and he expressed no opinion on the claimed debt. Ms. Kalawarny says that Mr. Kalawarny assumed all of their business' liabilities following the separation, including the refund claimed by Ms. Beaumier, so Ms. Kalawarny owes nothing.
3. Each party is self-represented in this dispute. Mr. Kalawarny is participating in this dispute, but sent no further correspondence to the CRT after submitting his dispute response. Neither respondent submitted any evidence.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Although the parties' submissions each call into question the credibility of the other party in some respects, the credibility of interested witnesses cannot be determined solely by whose personal demeanour in a proceeding appears to be the most truthful. The most likely account depends on its harmony with the rest of the evidence. Further, in the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized

that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

6. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money, or make an order that includes any terms or conditions the CRT considers appropriate.

### ***Mr. Kalawarny's Participation***

8. Both respondents submitted dispute responses for this dispute, although as noted, neither provided any evidence. The dispute responses confirm a telephone number, email address, and home address for each respondent. I am satisfied that both respondents are participating in this CRT dispute, and that the CRT has used their correct contact information, which they each confirmed in their dispute responses.
9. Ms. Kalawarny submitted arguments in this dispute. Mr. Kalawarny provided no arguments, despite several attempts by CRT staff to contact him by both telephone and email. Given that Mr. Kalawarny received and responded to the CRT dispute notice, and that he did not say that he was abandoning the dispute resolution process, I find that Mr. Kalawarny likely received the CRT's communications and knew that he had an opportunity to provide evidence and arguments. I find that Mr. Kalawarny chose not to provide any submissions. The CRT rules do not require participating parties to provide arguments. So, I find that all of the submissions the parties wished to provide are before me, and that I may decide this dispute on those submissions.

## **ISSUE**

10. The issue in this dispute is whether the respondents must refund Ms. Beaumier \$3,000, or another amount, for the cancelled vacation home rental.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Ms. Beaumier must prove her claims on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
12. The undisputed evidence is that in late 2019 and in January 2020, Ms. Beaumier paid a total of \$3,500 as partial payment toward a May 15, 2020 to May 18, 2020 vacation home rental at “Boyce Gyro Beach Lodge” (Gyro).
13. As noted, the respondents do not deny that they operated the Gyro vacation home rental business together. Ms. Kalawarny says that she separated from Mr. Kalawarny in March 2020. However, I find text message correspondence in evidence shows she continued to be Ms. Beaumier’s point of contact for the vacation home rental until at least June 2020. I find Ms. Beaumier continued to be involved in the Gyro business until at least June 2020.
14. Mr. Kalawarny’s only submissions, given in his dispute response, say that Ms. Beaumier’s reservation and correspondence were made through Ms. Kalawarny. However, I find Mr. Kalawarny does not deny that Ms. Beaumier’s reservation was for the Gyro business, or that the reservation and related payments were accepted with his permission. Further, both Ms. Beaumier and Ms. Kalawarny say that Mr. Kalawarny operated the Gyro business together with Ms. Kalawarny. As noted, Mr. Kalawarny does not say whether he and Ms. Kalawarny operated the Gyro business together, despite having an opportunity to do so. On balance, and given the lack of evidence to the contrary, I find that Ms. Kalawarny and Mr. Kalawarny jointly operated the Gyro business together until at least June 2020.

15. I find the evidence before me fails to show whether Gyro is an incorporated company, and whether it is a legal entity separate from its operators, Ms. Kalawarny and Mr. Kalawarny. Regardless, no Gyro business organization has been named as a party to this dispute. The parties do not argue that the Gyro business was a separate legal entity that was responsible for cancellation refunds. Further, the parties do not say that anyone other than the respondents might owe the claimed \$3,000 refund to Ms. Beaumier. Further, electronic banking statements show that Ms. Beaumier transferred \$3,500 to Ms. Kalawarny, which Ms. Kalawarny does not deny.
16. On the evidence before me, I find it likely that Ms. Kalawarny received Ms. Beaumier's payments on behalf of the Gyro business that she and Mr. Kalawarny each operated in their personal capacity. So, I find that if Ms. Beaumier is owed a refund, it is owed by Ms. Kalawarny and Mr. Kalawarny.
17. Text message correspondence in evidence shows that Ms. Beaumier cancelled the reservation on March 23, 2020. Ms. Kalawarny agrees, and Mr. Kalawarny does not deny, that the Gyro cancellation policy submitted by Ms. Beaumier is accurate. The cancellation policy provides for a full refund, less a \$500 cancellation fee, if reservations are cancelled more than 30 days in advance for non-peak-season reservations. Ms. Kalawarny does not say that the reservation was in peak season, and she confirmed by text message to Ms. Beaumier, and in her submissions, that 30 days' notice and a \$500 cancellation fee were required to cancel the reservation. I find that Ms. Beaumier cancelled the reservation more than 30 days in advance, in accordance with the cancellation policy.
18. On April 1, 2020, Ms. Kalawarny told Ms. Beaumier that "all deposits will be return[ed]" and that she would "forward all deposits" once funds were released or were in place. On June 1, 2020, Ms. Kalawarny told Ms. Beaumier that there would be no refunds at that time, but that a deposit refund would be provided sometime later. I find these are confirmations that the respondents owed Ms. Beaumier a refund under the cancellation policy. Although this correspondence suggests cash flow

issues may have affected the respondents' ability to pay the \$3,000 refund, I find that does not affect whether they owed Ms. Beaumier the refund.

19. The respondents' submissions each suggest that the other respondent is responsible for paying the refund.
20. As noted, Mr. Kalawarny says that Ms. Kalawarny arranged Ms. Beaumier's reservation and took payment. But, as I found above, Ms. Kalawarny corresponded with Ms. Beaumier and received her payments on behalf of the rental business operated jointly by both respondents. So, I find the fact that Ms. Kalawarny was Ms. Beaumier's contact at for the reservation and payments does not mean that Mr. Kalawarny bears no responsibility for a cancellation refund.
21. As noted, Ms. Kalawarny says that she separated from Mr. Kalawarny in March 2020, which is when Ms. Beaumier requested a refund. However, also as noted, she continued to represent the jointly operated Gyro business in dealings with Ms. Beaumier until at least June 2020, regardless of any separation.
22. Ms. Kalawarny also says that, under an alleged separation agreement, the Gyro business was transferred to Mr. Kalawarny, who agreed to be solely responsible for all Gyro liabilities. Ms. Kalawarny wrote an excerpt from this alleged agreement in her arguments, which is consistent with such a transfer and assumption of liability. However, there is no signed separation agreement in evidence, and Ms. Kalawarny does not explain why she failed to submit the agreement. Mr. Kalawarny does not say whether he signed a separation agreement. I note that the excerpt also suggests that Gyro was a corporate entity owned by both the respondents. However, I place no weight on this excerpt, because I find the evidence fails to show that the parties agreed to the excerpt as part of a separation agreement or other agreement. On the evidence before me, I am unable find that Mr. Kalawarny is solely responsible for Ms. Beaumier's cancellation refund.
23. Ms. Kalawarny says that Ms. Beaumier cancelled her reservation due to the COVID-19 pandemic. Ms. Kalawarny says the vacation home rental was available during the

May 15 to May 18, 2020 reservation period and Ms. Beaumier could have stayed there. I find that the reasons for Ms. Beaumier's cancellation are not relevant here. The respondents do not deny that Gyro's cancellation policy applied to the reservation, or that Ms. Beaumier followed that policy, which did not require a reason for cancellation. I find that whether this cancellation was because of COVID-19 concerns, and whether the respondents had difficulty paying refunds because of COVID-19, does not affect whether the respondents owed Ms. Beaumier a refund.

24. Ms. Kalawarny also says that an additional \$500 "rebooking fee" applied to Ms. Beaumier's cancellation, which she says Ms. Beaumier was aware of. Ms. Beaumier does not say whether she was aware of such a fee, but I note no rebooking fee is mentioned in Gyro's cancellation policy. I find the evidence does not show that an extra "rebooking fee" was payable in addition to the \$500 cancellation fee. So, I find that the respondents are not entitled to deduct a rebooking fee from the amount they owe Ms. Beaumier.
25. Having weighed the evidence, I find that the respondents owe Ms. Beaumier the claimed \$3,000 for the cancelled reservation payments. For clarity, the respondents owe this amount jointly and severally, which means Ms. Beaumier can collect the entire amount from either respondent.

## **CRT FEES, EXPENSES, AND INTEREST**

26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Beaumier was successful here, so I find she is entitled to reimbursement of the \$125 she paid in CRT fees. Neither party claimed CRT dispute-related expenses, so I order no expense reimbursement.
27. I find the parties had no agreement about interest payable on amounts withheld after a reservation cancellation. However, the *Court Order Interest Act* applies to the CRT. I find it would have been reasonable for the respondents to reimburse Ms. Beaumier within 2 weeks of the cancellation date. So, I find Ms. Beaumier is entitled to pre-

judgment interest on the \$3,000 debt from April 6, 2020, which is two weeks after the cancellation date, until the date of this decision. This equals \$20.22.

## ORDERS

28. Within 30 days of the date of this order, I order Laurinda Kalawarny and Darren Kalawarny to pay Jordyn Beaumier a total of \$3,145.22, broken down as follows:

- a. \$3,000 in debt for a cancellation refund,
- b. \$20.22 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

29. Ms. Beaumier is entitled to post-judgment interest, as applicable.

30. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a notice of objection to a small claims dispute.

31. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the

same force and effect as an order of the Provincial Court of British Columbia.

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Chad McCarthy, Tribunal Member